

## 1. INTRODUCTION

This Request For Bid seeks sealed bids from qualified organizations to provide Directional Underground Boring Services, located in Clinton and Dekalb County in the State of Missouri, for a contract period from Date of Award through April 30, 2007 to the Missouri Department of Transportation (MoDOT). Each bid must be mailed in a sealed envelope plainly marked BID ON DIRECTIONAL UNDERGROUND BORING SERVICES to Ms. Brenda Christie, Procurement Department, 3602 North Belt Highway, St. Joseph, Missouri 64506-1399, or hand-delivered in a sealed envelope to the Procurement Office in the General Services Building at 3602 North Belt Highway, St. Joseph, Missouri. Bids must be returned to the office of Ms. Brenda Christie no later than 2:00:00 P.M., CST, March 21, 2007.

The date specified for the receiving of bids is a firm deadline and all bids must be received at the designated office by that time. The Department does not recognize the U.S. Mail, United Parcel Service, Federal Express, or any other organization, as its agent for purposes of accepting bids. Any bids arriving at the designated office after the deadline specified will not be considered.

The bidder must use the firm name under which he/she is registered to do business in the State of Missouri. The bidder must ensure that his/her firm name is registered with the office of the Secretary of State.

### **RFB Coordinator:**

Ms. Brenda Christie, Procurement Agent  
Missouri Department of Transportation  
3602 North Belt Highway  
St. Joseph, Missouri 64506-1399  
Phone: 816-387-2430  
Fax: 816-387-2368

NOTE: The bidder must SIGN and RETURN this page with the bid.

## **BID**

- (1) The bidder agrees to provide the services specified herein at the firm, fixed prices stated on the Pricing Page, under the terms of this Request for Bid.

Authorized Signature of Bidder: \_\_\_\_\_

Date of Bid: \_\_\_\_\_

Printed or Typed Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Electronic Mail Address: \_\_\_\_\_

## 1. INTRODUCTION AND GENERAL INFORMATION

### 1.1 Introduction:

- 1.1.1 This document constitutes a request for competitive, sealed bids for the provision of directional underground boring services as set forth herein.
- 1.1.2 Organization – This document, referred to as a Request for Bid (RFB), is divided into the following parts:
- 1) Introduction and General Information
  - 2) Scope of Work
  - 3) Bid Submission
  - 4) Pricing Page
  - 5) Terms and Conditions
- 1.1.3 All questions must be directed to Brenda Christie at telephone number 816-387-2430, fax number 816-387-2368, or email at [Brenda.Christie@modot.mo.gov](mailto:Brenda.Christie@modot.mo.gov).

- a. Mandatory Pre-Bid Meetings at the sites is scheduled at both interchanges:

February 27, 2007 at 8:30:00 A.M. CST Dekalb County, I-35 and US 36  
February 27, 2007 at 10:00:00 A.M. CST Clinton County, I-35 and US 69

Deadline date for Pre-Bid Questions: March 7, 2007.

- b. Schedule of Events

Event	Date	Time
MoDOT issues RFB	February 7, 2007	
Pre-Bid Meetings	February 27, 2007	8:30:00 a.m. CST 10:00:00 a.m. CST
Deadline for Written Questions	March 7, 2007	2:00:00 p.m. CST
Deadline for MoDOT 's issuing Responses to Written Questions	March 14, 2007	2:00:00 p.m. CST
Deadline for Submitting a Bid	March 21, 2007	2:00:00 p.m. CST
Project Completion Date	April 30, 2007	

- 1.1.4 Drawings are available for pick up at the District Office, Customer Service, 3602 North Belt Highway, St. Joseph, Missouri 64506-1399.

## **2. SCOPE OF WORK**

### **CONTRACTUAL REQUIREMENTS:**

#### **2.1 General Requirements:**

- 2.1.1 The contractor shall provide directional underground boring services for the Missouri Department of Transportation (hereinafter referred to as the “MoDOT”) for the designated areas specified in Clinton County, and Dekalb County in the State of Missouri, in accordance with the requirements and provisions stated herein. Unless otherwise stated, the contractor shall not deviate from the requirements stated herein.

#### **2.2 Specific Requirements:**

- 2.2.1 The contractor shall provide the MoDOT with directional underground boring services which shall include, but not be limited to, the following:
- a. The contractor shall perform bores by the specified completion dates, which shall include any foreseen and/or unforeseen digging problems.
    - 1) The completion date for each bore specified herein is April 30, 2007.
  - b. The contractor shall install approximately a total of 4,712 feet of conduit at a depth of 24” and 8 to 10 pull boxes, at two different interchanges as per drawings.
    - 1) Interchange Locations:  
Dekalb County, I-35 and US 36 (Appx. 3,892 feet 1” conduit, and 8 to 10 pull boxes)  
Clinton County, I-35 and US 69 (Appx. 820 feet 1” and 2” conduit)
  - c. All conduits on the load side shall be 1” in size and shall be pushed between the predetermined pull box and pole locations at I-35 and US 36 Highway.
  - d. I-35 and US 69 Highway should not have to have pull boxes, unless the contractor says he needs them to finish the job.
  - e. Contractor will be responsible for any and all utility locations through the Missouri One Call System.
  - f. MoDOT shall provide all necessary conduits and pull boxes to complete the project.
  - g. All work shall be in accordance to the “Standard Specifications for Highway Construction, Standard Plans for Highway Construction” and any other Commission spec publication this work could fit under.

### **2.3 Insurance Requirements:**

2.3.1 The contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the contractor's operations under the contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by any of them.

a. Such insurance shall be written for not less than any limits of liability specified as part of contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the contractor's obligations under the contract. Unless otherwise specified, insurance limits shall be as follows:

- 1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained if required by law.
- 2) Public Liability (includes property damage and personal injury):
  - i. Not less than \$400,000 for any one person in a single accident or occurrence.
  - ii. Not less than \$2,500,000 for all claims arising out of a single occurrence.
- 3) Special Hazard Insurance: As required.
- 4) Builder's Risk: Not less than the full Contract amount.

### **2.4 Other Contractual Requirements:**

2.4.1 Prevailing Wage: The contractor shall be required to comply with the prevailing wages as Fixed by the Missouri Department of Labor and Industrial Relations, in effect as of the date of the issuance of the solicitation, for each affected craft and type of workmen in the following county (ies): Dekalb and Clinton. The Annual Wage Order # 13, increment #6, may be inspected at any District Office or at the Central Office in Jefferson City, MO.

a. The contractor shall submit notarized weekly payroll affidavit documentation included with the project request for payment. The successful vendor must provide a lien waiver from all material suppliers.

### 3. BID SUBMISSION

#### 3.1 Bid, Guaranty, and Contract Bond:

- 3.1.1 Each bid shall be accompanied by a **Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue—Credit State Road Fund** for an **amount equal to Five (5) Per Cent of the amount of the BID** submitted, as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue—Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the State of Missouri as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.
- 3.1.2 Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder will be retained until contract is executed and satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

#### 3.2 Failure to Execute Contract:

- 3.2.1 Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or certified check within 15 days after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the bid guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

#### 4. Pricing Page

- 4.1 Directional Underground Boring Services: The bidder shall provide firm, fixed prices in the table below for providing the services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required services specified elsewhere herein must be included in the stated prices.

Locations	Cost Per Foot	Total Cost
Clinton County I-35 and US 69 Interchange		
Dekalb County I-35 and US 36 Interchange		
Total Cost Project →		

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Signature

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Date

**ANTI-COLLUSION STATEMENT**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) **SS.**

\_\_\_\_\_ being first  
duly sworn, deposes and says that he is \_\_\_\_\_  
Title of Person Signing  
of \_\_\_\_\_  
Name of Bidder

that all statements made and facts set out in the proposal for the above project are true and correct; and that the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

By \_\_\_\_\_  
By \_\_\_\_\_  
By \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

## SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the proposal of a

( ) sole individual                                      ( ) partnership                                      ( ) joint venture

( ) corporation, incorporated under laws of state of \_\_\_\_\_

Dated \_\_\_\_\_.

Name of individual, all partners,  
or joint ventures:

Address of each:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

doing business under the name of:

Address of principal place of business in Missouri

\_\_\_\_\_  
(If using a fictitious name, show  
this name above in addition  
to legal names)

\_\_\_\_\_  
(If a corporation, show its name above)

ATTEST:                      (SEAL)

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the Proposal shall be executed in the legal name of the individual, partners, joint ventures, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of

State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following, RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highways and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.



**Directional Underground Boring Service**  
**BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_

as Principal and \_\_\_\_\_, as Surety are held and firmly bound unto the **STATE OF MISSOURI** (acting by and through the **Missouri Highways and Transportation Commission**) in the penal sum of:

\_\_\_\_\_ **Dollars**  
(\$ \_\_\_\_\_) to be paid to the **State of Missouri or to the Missouri Highways and Transportation Commission**, to be credited to the State Road Fund, the Principal and Surety binding themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_

**THE CONDITION OF THIS OBLIGATION** is such that:

**WHEREAS**, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission for furnishing **plant mix oil mat material** as set out in the proposal to which this bond is attached.

**NOW THEREFORE**, if the Missouri Highways and Transportation Commission shall accept the bid of the Principal and if said Principal shall properly execute and deliver to the Missouri Highways and Transportation Commission the contract and contract bond in compliance with the requirements of the proposal, the specifications and the provisions of law, to the satisfaction of the Highways and Transportation Commission, then this obligation shall be void and of no effect, otherwise to remain in full force and effect.

In the event the said Principal shall, in the judgment of the Missouri Highways and Transportation Commission, fail to comply with any requirement as set forth in the preceding paragraph, then the State of Missouri acting through the Missouri Highways and Transportation Commission shall immediately and forthwith be entitled to recover the full penal sum above set out, together with court costs, attorney's fees and any other expense of recovery.

(SEAL)

\_\_\_\_\_  
Principal

By \_\_\_\_\_

Signature

(SEAL)

\_\_\_\_\_  
Surety

By \_\_\_\_\_

Attorney-in-Fact

**NOTE: This bond must be executed by the PRINCIPAL and by a CORPORATE SURETY authorized to conduct surety business in the State of Missouri.**

## PREFERENCE IN PURCHASING PRODUCTS

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RSMo 2000 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

**All vendors submitting a bid/quotation must furnish ALL information requested below.**

### FOR CORPORATIONS:

State in which incorporated: \_\_\_\_\_

### FOR OTHERS:

State of domicile: \_\_\_\_\_

### FOR ALL VENDORS:

List address of Missouri offices or places of business:

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### THIS SECTION MUST BE COMPLETED AND SIGNED:

**FIRM NAME:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY:** \_\_\_\_\_ **STATE:** \_\_\_\_\_ **ZIP:** \_\_\_\_\_

**BY (signature required):** \_\_\_\_\_

**Federal Tax I.D. #:** \_\_\_\_\_ **if no Federal Tax I.D. # - list Social Security #:** \_\_\_\_\_

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

### **STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeror and must be adhered to. If time varies on different items, the Bidder/Offeror shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeror will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more**, no bids/proposals by telephone, telegram or telefax will be accepted. If provided, these bids/proposals should be returned in the MoDOT solicitation return envelope.
- g. If a solicitation return envelope is provided by MoDOT, the bid/quote/proposal should be returned in the envelope provided with the Bid/RFQ/RFP Request Number plainly indicated thereon.
- h. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

### **GENERAL TERMS AND CONDITIONS**

#### **General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

#### **Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

#### **Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) Sanctions for Noncompliance: In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

#### **Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Offeror agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and

explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

#### **Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and equipped for such work.
- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

#### **Invoicing and Payment**

- a. MoDOT is exempt from paying Missouri Sales Tax, Missouri Use Tax and Federal Excise Tax. However, the Contractor may themselves be responsible for the payment of taxes on materials they purchase to fulfill the contract. A Federal Excise Tax Exemption Certificate will be furnished to the successful Bidder/Offeror upon request.
- b. Each invoice should be itemized in accordance with items listed on the purchase order and/or contract. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. Unless otherwise provided for in the solicitation documents, payment for all equipment, supplies, and/or services required herein shall be made in arrears. The Missouri Highways and Transportation Commission (MHTC) shall not make any advance deposits.
- d. The MHTC assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any authorized quantity is subject to the MHTC's rejection and shall be returned at the Contractor's expense.
- e. The MHTC reserves the right to purchase goods and services using the state-purchasing card.

#### **Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

#### **Preferences**

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled **"PREFERENCE IN PURCHASING PRODUCTS"** should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled **"MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT"** should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

#### **Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.
- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### **Cancellation of Contract**

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.

- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

#### **Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

#### **Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

#### **Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

#### **Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

#### **Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

#### **Indemnification**

- a. The Contractor shall be responsible for injury or damages as a result of any services and/or goods rendered under the terms and conditions of this Agreement.
- b. In addition to the liability imposed upon the Contractor on the account of personal injury, bodily injury, including death, or property damage, suffered as a result of the Contractor's performance under this Agreement, the Contractor assumes the obligation to save harmless the Commission, including its agents, employees and assigns, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission, including legal fees.
- c. The Contractor also agrees to hold harmless the Commission, including its agents, employees and assigns, from any wrongful or negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the Contractor for any purpose under this Agreement, and to indemnify the Commission, including its agents, employees and assigns, from every expense, liability or payment arising out of such wrongful or negligent act or omission.

## **SPECIAL TERMS AND CONDITIONS**

### **Insurance**

- a. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the Contractor's operations under this Contract, whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by any of them.
- b. This insurance shall be written for not less than any limits of liability specified as part of this contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the Contractor's obligations under this contract. Unless otherwise specified, insurance limits shall be as follows:
  - 1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained if required by law.
  - 2) Public Liability (includes property damage and personal injury):
    - i. Not less than \$400,000 for any one person in a single accident or occurrence.
    - ii. Not less than \$2,500,000 for all claims arising out of a single occurrence.
  - 3) Special Hazard Insurance: As required.
  - 4) Builder's Risk: Not less than the full Contract amount.

### **Proposal/Bid Guaranty/Contract Bond**

- a. Each proposal shall be accompanied by a Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue – Credit State Road Fund for an amount equal to Five Percent (5%) of the amount of the BID submitted. This is to act as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment bond (Contract Bond) or a cashier's check, a bank money order or a certified check made payable to "Director of Revenue--Credit State Road Fund" in an amount equal to One Hundred (100%) of the contract price.
- b. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the State of Missouri as surety. The agent executing the same on behalf of the surety company must attach a current Power of Attorney setting forth his authority to execute the bond involved.
- c. Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder(s) will be retained until the contract is executed and a satisfactory Performance and Payment (Contract Bond) is furnished. Bid Bonds will not be returned except on specific request of the bidder.

### **Information and Reports**

- a. The Contractor shall provide all information and reports required by the Regulations, or Directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Missouri Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or Directives. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the Missouri Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

### **Prevailing Wage**

- a. If the bid/quote/proposal is accepted, the vendor will be required to comply with the prevailing wages as fixed by the Missouri Department of Labor and Industrial Relations, in effect as of the date of the issuance of the solicitation, for each affected craft and type of workmen in the following county(ies): Clinton and Dekalb. The Annual Wage Order #13, increment #6, may be inspected at any District Office or at the Central Office in Jefferson City, MO.
- b. The Contractor shall submit notarized weekly payroll affidavit documentation included with the project request for payment. The successful vendor must provide a lien waiver from all material suppliers.

### **Permits, Licenses and Safety Issues**

- a. The contract price shall include any necessary permits and licenses required by law incidental to the work. Local ordinances requiring building permits are not applicable to state agencies.
- b. The Contractor will comply with local laws involving safety in the prosecution of the work.

### **Award**

- a. Award of this bid/quote/proposal will be made on an "All Or Nothing" basis using the "lowest and best" principle of award.

### **Failure to Execute Contract**

- a. Failure to execute the contract and file acceptable performance payment (Contract Bond) or cashier's check, bank money order or

certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the proposal guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

- b. The following days shall be construed as **official holidays** under the terms of the contract:

January 1	New Year's Day
Third Monday in January	Martin Luther King, Jr.'s Birthday
February 12	Lincoln's Birthday
Third Monday in February	Washington's Birthday
May 8	Truman's Birthday
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
Second Monday in October	Columbus Day
November 11	Veteran's Day
Fourth Thursday in November	Thanksgiving Day
December 25	Christmas Day

- c. When any of the above **holidays falls** on a **Sunday**, the holiday will be observed on the following **Monday**; when any of the above **holidays falls** on a **Saturday**, the **holiday** will be observed on the immediately preceding **Friday**.